

1                                   BEFORE THE  
2                                   POLLUTION CONTROL HEARINGS BOARD  
3                                   STATE OF WASHINGTON

4   IN THE MATTER OF                                   )  
5   WALLULA WATER DISTRICT NO. 1,                   )  
6                                   Appellant,                   )       PCHB No. 976  
7                                   v.                                   )  
8   STATE OF WASHINGTON,                            )  
9   DEPARTMENT OF ECOLOGY and                    )  
10   DEAN W. MARR,                                   )  
11                                   Respondents.                   )  
12                                   \_\_\_\_\_)       FINAL FINDINGS OF FACT,  
13                                   \_\_\_\_\_)       CONCLUSIONS OF LAW  
14                                   \_\_\_\_\_)       AND ORDER

12       This matter, the appeal of a ground water permit issued to Dean  
13   W. Marr, came on regularly for hearing in Spokane, Washington, on  
14   Friday, April 30, 1976. Appellant, Wallula Water District No. 1, was  
15   represented by Phelps R. Gose; Joseph J. McGoran, Assistant Attorney  
16   General, appeared for respondent Department of Ecology; respondent  
17   permittee Dean W. Marr appeared pro se; Ellen D. Peterson, hearing  
18   examiner, presided.

1 Having read the transcript, examined the exhibits and considered  
2 the records and files herein, the Pollution Control Hearings Board  
3 makes the following

4 FINDINGS OF FACT

5 I

6 In 1971 Dean W. Marr registered a water right claim for the with-  
7 drawal of ten gallons of water per minute, four acre-feet a year, for  
8 the irrigation of .35 acres, identified as Lots 13, 14, 15 and 16 of  
9 Block 5 within the Wallula, Washington Townsite. The point of diver-  
10 sion is a well on Mr. Marr's property in place since 1952.

11 II

12 On March 22, 1975, Mr. Marr applied for a ground water permit for  
13 the withdrawal from his existing well of 40 additional gallons of water  
14 per minute, three acre-feet per year, on .75 acres, separated from  
15 Lots 13-16 by a county alley and identified as Lots 17, 18, 19 and 20  
16 of Block 5. A permit was issued on January 16, 1976, which reduced  
17 the .75 acres requested to .38 acres as the .75 acreage noted in the  
18 application included the .35 acres already irrigated under the water  
19 right claim. Testimony at hearing indicated that Mr. Marr had in fact  
20 been withdrawing water from his well for the irrigation of Lots 17-20  
21 since 1969.

22 Although in his permit application Mr. Marr sought to withdraw  
23 water for "Group Domestic Supply and Irrigation" for four residential  
24 units, the permit was issued for "irrigation" and the use intended  
25 according to the permittee's testimony is solely non-commercial gardening.

26 III

27 Appellant, Wallula Water District No. 1, protested the granting of

1 the instant permit, contending that, (1) the jurisdiction of the water  
2 district within the area served by it is exclusive as to the furnishing  
3 of water, and (2) if existing water rights are expanded or new rights  
4 issued, the ability of the District to meet its indebtedness and maintain  
5 its water distribution system will be impaired, thus constituting a  
6 detriment to the public interest.

7 IV

8 Formation of the Wallula Water District No. 1 was prompted by the  
9 failure of at least nine wells within the townsite to meet health  
10 standards. Thereupon, the District was formed responsive to  
11 Referendum 27 and pursuant to Title 57 RCW, Water Districts. The  
12 basic objective of Referendum 27, Municipal and Industrial Water  
13 Supply Grant and Loan Program, was to assure the citizens of Washington  
14 a "safe and reliable drinking water supply."<sup>1</sup>

15 V

16 A bond issue for construction of the Wallula Water District water  
17 supply system was approved by the electorate and a local improvement  
18 district (U.L.I.D.) was also formed. The Water District's bonded  
19 indebtedness, its loans from the state and the maintenance and improve-  
20 ment of the system are paid from water-use and U.L.I.D. revenues. Water  
21 District representatives testified that the District is required to  
22 have a minimum of 20 hook-ups under the terms of its financing agreements.  
23 At the time this appeal was filed, the District was servicing 29 units.

24 VI

25 The subject acreage is in the U.L.I.D. within the larger Wallula  
26

27 1. See Exhibit A-2.

1 Water District No. 1. At the time of Mr. Marr's application, the Water  
2 District's supply system was not completed but a main line of the  
3 District's system is now laid approximately 15 feet from the permittee's  
4 Lots 17, 18, 19 and 20, from which such lots could be serviced. On  
5 March 11, 1975, however, the permittee signed a "Service Declination  
6 Statement" wherein he cited the existence of his own water supply as  
7 the reason he was not interested in executing a Water Users Agreement  
8 with the District.

9 The District's regulations apparently restrict a customer's use  
10 of its water to lots adjacent to its pipe and precludes crossing the  
11 county alleys to water additional property without payment for a  
12 separate hook-up. Again, according to the testimony of the Water  
13 District, it is the crossing of the alley, permissible under Mr. Marr's  
14 permit, which is encouraging some present customers of the District to  
15 consider returning to the use of their private wells which they had  
16 closed voluntarily when joining the District.

17 VII

18 In granting or denying a ground water permit, the Department of  
19 Ecology is governed by RCW 90.44.060 which adopts the surface water  
20 provisions of RCW 90.03.290. These provisions establish standards to  
21 be applied by the supervisor in reviewing applications, specifically:

22 . . . if he shall find that there is water available  
23 for appropriation for a beneficial use, the  
24 appropriation thereof as proposed in the application will  
25 not impair existing rights or be detrimental to the  
26 public welfare, he shall issue a permit . . . But where  
27 there is no unappropriated water in the proposed source of  
supply, or where the proposed use conflicts with existing  
rights, or threatens to prove detrimental to the public  
interest, having due regard to the highest feasible  
development of the use of the waters belonging to the public,  
it shall be duty of the supervisor to reject such

1 application and to refuse to issue the permit asked for. . . .

2 Relevant also to this matter is RCW 90.54.020, a recitation of the  
3 fundamentals affecting the utilization and management of waters of  
4 the state, wherein it is stated:

5 (7) Development of water supply systems, whether  
6 publicly or privately owned, which provide water to  
7 the public generally in regional areas within the state  
8 shall be encouraged. Development of water supply  
9 systems for multiple domestic use which will not serve  
10 the public generally shall be discouraged where water  
11 supplies are available from water systems serving the public.

#### 9 VII

10 It was the testimony of the Department of Ecology witness that  
11 the economic effects on the Water District of the granting of the  
12 permit to Mr. Marr were not considered in the Department of Ecology's  
13 review of the application and that such considerations were irrelevant.  
14 The Department of Ecology's practice, according to testimony presented,  
15 is and will be to apprise applicants of the relative costs of  
16 purchasing water from the water districts or digging their own well.  
17 (For example, the projected cost to Mr. Marr during his first year of  
18 service from the District was \$500; today's construction cost of a  
19 125 foot well is estimated at \$2,500). If the applicant thereafter  
20 desires to pursue his ground water application, it will be processed  
21 without regard to its impact on the respective water district.

#### 22 VIII

23 Any Conclusion of Law hereinafter stated which may be deemed a  
24 Finding of Fact is hereby adopted as such.

25 From these Findings of Fact the Board comes to these

26 FINAL FINDINGS OF FACT,  
27 CONCLUSIONS OF LAW AND ORDER

1 CONCLUSIONS OF LAW

2 I

3 There is no specific statutory basis for the Water District's  
4 contention that its furnishing of water within its boundaries is  
5 exclusive. (See RCW 57.04.080, 57.08.010, 57.08.065). However, the  
6 language of RCW 90.54.020(7) and an interpretation of "highest  
7 feasible development of the use of the waters belonging to the public"  
8 (RCW 90.03.290) would seem to justify establishing such exclusivity  
9 under certain conditions as a matter of policy.<sup>2</sup> However, the Board  
10 concludes that in those instances where, as here, the permit authorizes  
11 water solely for non-commercial gardening, no such exclusive furnishing  
12 of water by the District is warranted.

13 II

14 The Board further concludes that where the issued permit authorized  
15 water solely for irrigation, it was not error to fail to consider  
16 the impact of the permit on the viability of the Water District. Even  
17 if this Board were to conclude that in reviewing such permits the  
18 Water District's viability was a matter of public interest within the  
19 meaning of RCW 90.03.290, appellant failed to establish that the  
20 issuance of the instant permit to Mr. Marr would result in financial  
21 hardship to the District.

22 III

23 Any Finding of Fact which should be deemed a Conclusion of Law is  
24 hereby adopted as such.

25 Therefore, the Shorelines Hearings Board enters this

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2. See, for related policy considerations, Alderwood Water District v. Pope & Talbot, 62 Wn.2d 319, 382 P.2d 639 (1963).

ORDER

The action of the Department of Ecology in issuing Ground Water Permit No. G3-24430 to Mr. Dean W. Marr, is affirmed.

Error on the face of the instant permit with regard to the point of diversion noted was stipulated by the parties as not material to the disposition of this matter. Reformation of this error by the Department of Ecology shall not affect Findings of Fact or Conclusions of Law herein.

DONE at Lacey, Washington, this 11<sup>th</sup> day of June, 1976.

POLLUTION CONTROL HEARINGS BOARD

Chris Smith  
CHRIS SMITH, Chairman

W. A. Gissberg  
W. A. GISSBERG, Member

Walt Woodward  
WALT WOODWARD, Member

FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER